

Remarks/Arguments

The Applicant thanks the Examiner for granting a telephone interview on the present case. The interview was conducted on May 9, 2005, at 11:00 AM CDST and covered proposed amendments to the independent claims of the application, based on a set of proposed amended claims faxed to the Examiner on May 5, 2005 by the Applicant.

The Examiner suggested that the amendments to the first elements of claims 1 and 11, as proposed by the fax, were broadening amendments. The amendment proposed by the fax read as follows:

*"a data resource request modifier, adapted to intercept and modify a data resource request issued by a user requesting data from said network prior to said data resource request ~~reaching a~~ being advanced by any data server in said network, to create a modified data resource request"*

The Applicant proposed the language of the claim be altered to reflect that the data resource request was modified prior to being advanced by a first data server encountered in the network. The Examiner agreed that such an amendment would aid in clarifying the present invention. The amendment proposed during the interview is as follows:

*"a data resource request modifier, adapted to intercept and modify a data resource request issued by a user requesting data from said network prior to said data resource request ~~reaching a~~ being advanced by a first data server encountered in said network, to create a modified data resource request"*

Regarding the amendments to the second claim elements of independent claims 1 and 11, and to the first claim elements of independent claims 6 and 16, the Examiner agreed that the prior art of record did not identically show the limitation of "*said requested data remains unmodified from said alternate server through delivery to said user,*" but requested that the Applicant indicate the language within the specification supporting the amendment, which the Applicant has provided below in the "Claim Amendments" section of this response.

This Response is provided in response to a final Office Action mailed January 13, 2005, in which claims 1-20 were rejected under 35 U.S.C. §102(b) as being anticipated by prior art.

### **Claim Amendments**

The amendments to independent claims 1, 6, 11, and 16 have not been made for reasons of patentability, but rather have been amended to more particularly point out and distinctly claim the subject matter regarded by the Applicant as his invention. The amendments to the claims have been made to make explicit that which was implicitly inherent and within the ordinary meaning of terms of art used within the language of claims, and as would be understood by one of ordinary skill in the art.

Support for the amendments to the first claim elements of independent claims 1 and 11 may be found by viewing FIG. 11, and as disclosed on page 23, line 26 through line 20 of page 24 of the specification. Support for the amendments to the second claim elements of independent claims 1 and 11, and to the first claim elements of independent claims 6 and 16 may be found within the specification on page 17, lines 4-13, and on page 22, lines 7-26.

### **Rejection of Claims Under 35 U.S.C. §102(b)**

The Office Action rejected claims 1-20 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,742,762 issued to Thomas H. Scholl et al., April 21, 1998 (Scholl '762).

The Applicant respectfully traverses the foregoing rejection and submits that the claimed invention as claimed on January 29, 2001 is, under 35 U.S.C. §102(b), patentable over Scholl '762, because every element of the claimed invention is not identically shown in Scholl '762.

Anticipation means a lack of novelty, and is a question of fact which is reviewed by the reviewing court using a substantial evidence standard. *Brown v. 3M*, 60 USPQ2d 1375 (Fed. Cir. 2001); *Baxter Int'l, Inc. v. McGaw, Inc.*, 47 USPQ2d 1225 (Fed. Cir. 1998). To anticipate a claim, every limitation of the claim must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 58 USPQ2d

1286 (Fed. Cir. 2001). *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831 (2002). Each such limitation must be found either expressly or inherently in the prior art reference. *Schering Corporation v. Geneva Pharmaceuticals, Inc.*, 02-1540, Decided August 1, 2003 (Fed. Cir. 2003). "For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference." See, *In re Bond*, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), quoting *Diverstech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

### Claims 1-5

Regarding claims 1-5, Scholl '762 fails to show the first element of claim 1, i.e., "a data resource request modifier, adapted to intercept and modify a data resource request issued by a user requesting data from said network prior to said data resource request *being advanced by any* data server in said network, to create a modified data resource request."

Scholl '762 shows "A conventional Web client 1, supporting a GUI 2, makes a request for information to a Web server 3... The Web server 3 recognizes that the information to be retrieved pursuant to the request must be obtained by the present invention 5, the network management gateway 5 ("NMG"), and the Web server 3 forwards the request to the present invention 5..." (see FIG. 3, and col. 6, lines 6-14 describing FIG. 3).

Scholl '762 fails to show a data resource request modifier, adapted to intercept and modify a data resource request issued by a user requesting data from said network prior to said data resource request *being advanced by any* data server in said network, to create a modified data resource request. Any modification of a data resource request issued by a user that is made by "the network management gateway 5 ("NMG")" occurs after, and not prior to the data resource request has been *advanced by any* data server in said network. Scholl '762 shows that Web server 3 (Web server 3 of FIG. 3), forwards the data resource request to "the network management gateway 5 ("NMG")," (see FIG. 3, and col. 6, lines 6-14 describing FIG. 3). Further, as the Examiner points

out, a modification occurs *not to the data resource request* but rather the modification occurs to the data being requested.

Because Scholl '762 fails to identically show, either expressly or inherently, each element of the invention claimed by claim 1, the Examiner fails to provide a prima facie showing of anticipation under 35 U.S.C. §102(b) of claim 1. Accordingly, the Applicant requests withdrawal of the rejection of claim 1; the withdrawal of the rejections of claims 2-5 depending from claim 1; and passage of claims 1-5 to allowance.

#### Claims 6-10

Regarding claims 6-10, in light of the hereinabove amendments, Scholl '762 fails to show the first element of claim 6, "a data response modifier, adapted to intercept and modify a data response issued by a data server in said network to create a modified data response before said requested data reaches said user, wherein said modified data response activates delivery of said requested data from an alternate server in the network, and in which said requested data remains unmodified from said alternate server through delivery to said user."

Scholl '762 clearly shows modification of the requested data, rather than a re-direction of the data request to an alternate server for the delivery of the requested data to the user in an unmodified form. Scholl '762 shows "The appropriate data is then collected in response by the managed network 6 and objects 8, and then sent to the network access means 7. From there the responses are transferred to the present invention 5, which converts the network management information in real-time, on the fly, to HTML documents ... The documents are then processed by the CGI 13 (*of the present invention 5*) and passed to a Web server 3, and then to the client 1 through the Internet, or otherwise," (emphasis added) (see FIGS. 3 and 4, and col. 7, lines 10-30).

Scholl '762 fails to identically show a data response modifier that creates a modified data response, which activates delivery of the requested data from an alternate server in the network to the user in an unmodified form. Rather, the Applicant submits, Scholl '762 shows that requested data (which may utilize any number of protocols, for example: TCP/IP, SLIP, PPP, OSI, Frame Relay, proprietary,

or others) is collected by the managed network 6 and objects 8, passed through the network access means 7 to the network management gateway 5, which converts the requested data in real-time, on the fly, to HTML documents from the particular protocol of the requested data, which is passed to a Web server 3, and then to the client 1.

There is no showing by Scholl '762 that the real-time, on the fly, conversion of the requested data from the particular protocol of the requested data to HTML documents activates delivery of the requested data from an alternate server in the network. Scholl '762 clearly shows the requested data is modified, i.e. converted into HTML documents, prior to being delivered to the user.

Because Scholl '762 fails to identically show, either expressly or inherently, each element of the invention claimed by claim 6, the Examiner fails to provide a prima facie showing of anticipation under 35 U.S.C. §102(b) of claim 6. Accordingly, the Applicant requests withdrawal of the rejection of claim 6; the withdrawal of the rejections of claims 7-10 depending from claim 6; and passage of claims 6-10 to allowance.

#### Claims 11-20


Regarding claims 11-20, as pointed out by the Examiner, because claims 11-20 represent method claims corresponding to system claims 1-10 and incorporate limitations in common to claims 1-10, the argument provided hereinabove for the patentability of claims 1-10 apply in common to the respective method claims 11-20. Accordingly, the Applicant requests withdrawal of the rejection of claims 11-20 and passage of same to allowance.

**Conclusion**

The Applicant respectfully requests reconsideration and allowance of all of the claims pending in the application. This Response is intended to be a complete response to the final Office Action mailed January 13, 2005.

Should any questions arise concerning this response, the Examiner is invited to contact the below listed Attorneys.

Respectfully submitted,

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